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December 12, 2007

BY E-FILE

The Honorable Joseph J. Farnan, Jr.
United States District Court, District of Delaware
844 North King Street
Wilmington, DE 19801

Re: *NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc.*
C.A. No. 06-311 (JJF)

Dear Judge Farnan:

I write on behalf of my clients, Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd. (collectively, "NICE") in advance of the hearing now scheduled for Friday, December 14 at 12:30 p.m., in which my associate Monté T. Squire shall participate. I write to address the matters of narrowing of the issues for presentation at trial and pre-trial scheduling. The parties have exchanged positions in that we conferred several times on these issues and remain unable to reach agreement.

NICE has proposed additional narrowing of the claims at issue to a total number of 15 claims and 6 patents, withdrawing the 12 additional claims and 2 additional patents from the litigation. Specifically, NICE proposes to narrow the case as follows: '371 Patent: claims 1, 8; '570 Patent: claim 6; '345 Patent: claims 14, 48; '372 Patent: claims 1, 15, 19, 33; '920 Patent: claims 1, 16, 21; '109 Patent: claims 1, 3, 6. Again, that leaves a manageable set of claims and patents for trial.

NICE has continued since December 6, with the efforts it has undertaken for many, many months to work diligently to reduce the number of claims, which were originally over 70 claims and 10 patents. Witness has refused to participate in narrowing the issues for trial and has not withdrawn any prior art references and/or invalidity contentions relating to the

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remaining claims at issue. Witness' overly broad invalidity contentions present a major obstacle to the narrowing of claims. Witness has asserted at least 70 prior art references as invalidating one or more of the six remaining patents-in-suit. To date, only NICE has made any effort to narrow the focus for trial. Witness has made no effort whatsoever, preferring instead to complain about the scope of the trial in its persistent drumbeat to try to put off the trial date the parties have known about since October 2006. Notwithstanding, NICE is continuing to consider further narrowing of its claims, and intends to communicate such narrowing, if any, to Witness by December 13, 2007.

With respect to scheduling, the parties have exchanged and discussed a number of proposals. The parties have agreed to the following components of pre-trial scheduling:

DATE	PRE-TRIAL ACTIVITY
December 17, 2007	Service of NICE's Damages Expert Report
December 19, 2007	Service of Motion(s) in Limine
December 28, 2007	Service of Witness' Responsive Damages Expert Report Service of Responses to Motion(s) in Limine (no reply)
January 2, 2008	Service of NICE's Proposed Pre-trial Order and related documents Exchange by the parties of deposition designation for use at trial
January 4, 2006	Service of Witness' Proposed Pre-trial Order and related documents Exchange by the parties of counter-deposition designations for use at trial and objections to deposition designations

While the parties have reached agreement on these items, the key dates for the exchange of technical expert reports and the completion of expert depositions sufficiently in advance of trial remain unresolved. NICE proposes the following schedule:

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DATE	PRE-TRIAL ACTIVITY
December 17, 2007	Service of NICE's Infringement Expert Report
December 21, 2007	Service of NICE's Witness' Invalidity Expert Report
December 27, 2007	Service of Witness' Responsive Infringement Expert Report
December 31, 2007	Service of NICE's Responsive Invalidity Expert Report
January 3-7, 2008	Expert Deposition Discovery Period

Witness' proposed alternative schedule will certainly be the subject of a letter it writes to the Court. The disagreements with respect to scheduling focus on two areas. The first is the amount of time Witness will have to serve its invalidity expert report after the service of NICE's infringement expert report. The delay that Witness requests is much longer than the circumstances warrant. In particular, as Witness reported at the conclusion of the hearing on December 6, it has filed a re-examination request with the Patent & Trademark Office on all of the patents-in-suit. In connection with these re-examination requests, Witness has most certainly prepared its invalidity case, and as a result, there is no need for the delay requested by Witness, let alone a delay as extensive as set forth in Witness' proposed expert discovery schedule. The second obstacle to scheduling is that Witness now reports that its two technical experts are "unavailable" during the course of the holidays to prepare their expert reports in accordance with the same schedule and all of its experts are "unavailable" for deposition until January 8, 2007 or later, two of which, according to Witness' counsel, must occur in Indiana and San Francisco. Again, all parties, and presumably their experts through the parties for well over a year have known about this trial date and the need for finalizing expert reports prior to trial, as a result NICE will – and Witness should be expected to – finalize expert reports in accordance with a reasonable and equitable schedule.

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Obviously, counsel is available should the Court have any questions.

Respectfully,

Melanie K. Sharp (mtl)
#4764

Melanie K. Sharp (No. 2501)

MKS:mts

cc: Monté T. Squire, Esq.
Scott Lindvall, Esq.
Clerk of the Court (by Hand Delivery)
William J. Marsden Jr., Esquire (by Email)